

healre01.012

Remarks

Claims 1-4 are pending in this application.

Support for the claims as amended

Claims 1-4 are method claims. Applicants have amended claims 1-4 to more clearly impart functionality to a processor and an accreditation module. The amendments are fully supported at least by the supervisory host computer 10 in FIGs. 1 and 3 and the accreditation module 70 in FIG. 1.

The rejection under 35 U.S.C. § 101

The Examiner rejected claims 1-4 under 35 U.S.C. § 101 as directed to non-statutory subject matter. As presently amended, the claims are now more clearly tied to a “particular apparatus”, namely the processor and the storage device to which the processor has access. The claims more clearly recite that the processor is programmed to manage and record the consultation between the first physician and the second physician, and also recite the steps that the processor performs. Applicants respectfully submit that amended claims 1-4 overcome the Examiner’s rejection under 35 U.S.C. § 101. In view of the foregoing amendments and remarks, reconsideration of claims 1-4 is respectfully requested.

Traversal of the rejection of claims 1-2 under 35 U.S.C. § 103

The Examiner rejected claims 1-2 under 35 U.S.C. § 103 as being unpatentable over Fontelo, and further in view of Remote. Applicants respectfully traverse this rejection.

What Applicants are claiming

A central characteristic of Applicants’ “method of providing continuing medical education credit to a first physician for a consultation between the first physician and a second physician” is the role of the intermediary. Claim 1 has been amended to more clearly recite that the intermediary includes a processor that is programmed to manage and record the consultation between the first physician and the second physician. Claim 1 has also been amended to more clearly recite the involvement of the processor in the steps of the method. More specifically, amended claim 1 now recites (emphasis added):

healre01.012

A method of providing continuing medical education credit to a first physician for a consultation between the first physician and a second physician, the first and second physicians being coupled via a telecommunications system to an intermediary having a processor and a storage device to which the processor has access, the method comprising the steps of:

receiving a request for a consultation from the first physician via the telecommunications system at the processor, *the processor being programmed to manage and record the consultation between the first physician and the second physician*, the processor storing the request in the storage device;

receiving by the processor a selection made by a staff physician in the intermediary of the second physician, the second physician having an expertise in a specialty in which the consultation is requested by the first physician;

sending by the processor the stored request to the selected second physician via the telecommunications system;

receiving by the processor a comment made with regard to the consultation via the telecommunications system from the selected second physician and the processor storing the comment;

providing by the processor the stored comment from the selected second physician to the first physician via the telecommunications system;

on conclusion of the consultation, *an accreditation module of the processor recording* information concerning the consultation in a continuing medical education database accessible to the processor, the information being associated with the first physician; and

creating, by the accreditation module, an accreditation report for the first physician from the information in the continuing medical education database, the accreditation report comprising a certification of the continuing medical education credit earned by the first physician from participation in the consultation.

As may be seen from the foregoing, the intermediary processor receives the consultation request, enables a staff physician at the intermediary to select the physician to be consulted, sends the request to the selected physician, receives a comment made by the selected physician, provides the comment to the first physician, stores information concerning the consultation, and uses the information to make an accreditation report which certifies that the first physician has earned a CME credit by participating in the consultation.

What the references disclose

The combined references do not disclose the kind of involvement of the intermediary, and especially the intermediary's processor, in providing continuing medical education as set forth in amended claim 1. Fontelo simply employs the Web to make instructional materials which have been designated by the USUHS for CME credit available for physicians to access on their own (page 141, paragraph 3). While in Fontelo the physicians can use the USUHS' Web site as a

healre01.012

“forum for exchanging diagnostic opinions on interesting or difficult, nonemergency cases from other pathologists or diagnosticians worldwide” (page 141, par. 4-page 142, par. 1.), there is no disclosure or suggestion in Fontelo of claim 1’s limitations of an intermediary responding to a consultation request from a doctor by selecting a doctor to be consulted, setting up the consultation, and then making the arranged consultation between the two doctors the basis for the granting of CME credit for the doctor who made the consultation request.

At a minimum, Fontelo does not disclose “receiving a request for a consultation from the first physician”. Rather, Fontelo describes a system that can be used a discussion forum by physicians. In the Fontelo system, physicians can transmit images that can later be accessible to other doctors. There is no explicit method for requesting a consultation. Secondly, Fontelo does not disclose “receiving by the processor a selection made by a staff physician in the intermediary of the second physician” or “sending by the processor the stored request to the second physician.” Fontelo does not disclose selecting a doctor to respond to a particular consultation request nor transmitting the request to a specific selected doctor. In addition, the only discussion of granting CME credit in Fontelo is in response to physicians returning responses to predetermined cases (page 141, column 2, paragraph 2 and FIGS. 1-4). As the Examiner admits on Page 6 of Paper No. 20081224, there is no discussion of granting CME credit in response to a consultation between two physicians.

The Remote reference describes a telemedicine network which provides two-way interactive audio/visual communications which can be used for consultations (page 167, column 1, paragraph 2). Physicians who use the MCG system for consultations are given CME credit (page 168, col. 1, paragraph 3). The sites used for the remote consultations have facilitators which manage paperwork and videotapes, direct the camera, and operate the equipment” (page 167, column 1, last paragraph). Remote thus goes beyond Fontelo in disclosing that consultations may form the basis for CME credit, but it, too, fails to disclose an intermediary responding to a consultation request from a doctor by selecting a doctor to be consulted, setting up the consultation, and then making the arranged consultation between the doctors the basis for the granting of CME credit for the doctor who made the consultation request. In particular, Remote’s “facilitators” only deal with non-medical matters, the facilitators do not select the specialist to be consulted.

healre01.012

It should be pointed out here that the fact that it is the intermediary who selects the physician to be consulted, manages the consultation, and makes the consultation the basis for certifying CME credit is more than just a design choice. Because it is the staff physician at the intermediary who selects the physician to be consulted and manages the consultation, a physician who has no knowledge of the specialty or specialists to be consulted can use the method set forth in the claim to get the specialist his or her patient needs. The physician can also get CME for learning enough from the consultation to improve his or her care for the patient.

In addition, while there is no motivation to combine Fontelo and Remote, the method of providing continuing education credit as recited in amended claim 1 would not have been obvious to one of ordinary skill in the art at the time the method was made in view of the combination of Fontelo and Remote. The combination of the two references does not explicitly teach, nor does it suggest the method recited in amended claim 1. The combination of Fontelo and Remote does not disclose an intermediary responding to a consultation request from a first doctor (i) by selecting a second doctor to be consulted, (ii) transmitting the request to the second doctor, (iii) returning the second doctor's response to the first doctor, and (iv) then making the arranged consultation between the doctors the basis for the granting of CME credit for the doctor who made the consultation request.

Because amended claim 1 includes limitations which are disclosed in neither Fontelo nor Remote, nor obvious in view of the combination of Fontelo and Remote, Applicants respectfully submit that amended claim 1 is patentable over the combination of Fontelo and Remote. In view of the foregoing remarks, reconsideration of claims 1-2 is respectfully requested. As claims 2-4 depend from claim 1, Applicants also respectfully submit that claims 2-4 are allowable as depending from an allowable base claim.

Limitations of claim 2 which are not disclosed in Fontelo or Remote

The additional limitations of claim 2 involve retrieving "instructional material *relevant to the comment and the consultation*" selected by the intermediary's staff physician and providing it to the physician who requested the consultation. The combination of Fontelo and Remote does not disclose an intermediary who provides instructional material relevant to a consultation that the

healre01.012

intermediary has arranged. Rather, Remote only discloses that the physician being consulted may call up information on a CD-ROM that the consulting physician may send to the requesting physician by fax or modem. (Page 167, column 1, paragraph 2).

Traversal of the rejection of claims 3-4 under 35 U.S.C. § 103

The Examiner also rejected claims 3-4 under 35 U.S.C. § 103 as being unpatentable over Fontelo, Remote, and further in view of Galewitz. Applicants respectfully traverse this rejection.

Limitations of claims 3 and 4 which are not disclosed in Fontelo, Remote, or Galewitz

While Galewitz, Fontelo, and Remote all disclose granting CME credit, none of them, either alone or in combination, discloses the step of "providing ... an examination based on at least the instructional material [provided to the first physician]" as recited in amended claim 3, nor the step of "providing ... an examination based on at least the comment [from the second physician] to the first physician".

Independent patentability of claims 2-4 over the references

Because each of claims 2-4 has additional limitations which are not disclosed in any of the references nor in any combination of the references, Applicants respectfully submit that claims 2-4 are patentable in their own rights over the references.

Extension of Time

Applicant hereby petitions for a three-month extension of time to move the response deadline up to and including Thursday, January 21, 2010. The fees for a three-month extension of time and a Request for Continued Examination accompany this response. No other fees are believed to be required. Should any be, please charge them to deposit account number 505097. Overpayments should be credited to the same account.

Conclusion

Applicants have demonstrated that their claims as amended are fully supported by the application as filed, have amended their claims to overcome the rejection under 35 U.S.C. § 101, and have traversed the rejections under 35 U.S.C. § 103. Applicants have thus been fully responsive to Examiner's final Office action of 7/21/2009. Based on the foregoing amendments and remarks,

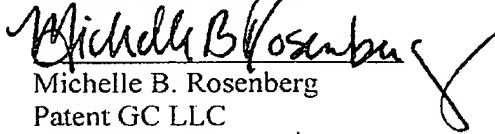
JAN 20 2010

healre01.012

Applicants respectfully request reconsideration, withdrawal of all rejections and allowance of all claims.

The Examiner is invited to contact Applicants' undersigned representative by telephone if it would in any way aid in the advancement of this application to allowance.

Respectfully submitted,



Michelle B. Rosenberg

Patent GC LLC

176 Federal Street, 5th Floor

Boston, MA 02110

Registration No. 40,792

Voice: (508) 405-0048

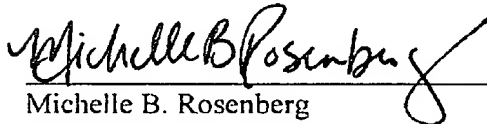
Fax: (617) 737-5020

Email: mrosenberg@patentgc.com

Date: January 20, 2010

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.



Michelle B. Rosenberg
Registration No. 40,792

Date: January 20, 2010